

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HEDELITO TRINIDAD Y GARCIA	)	CASE NO. CV 07-06387 MMM (SSx)
Petitioner,	)	ORDER DENYING MOTION
	)	TO STAY
vs.	)	
	)	
MICHAEL BENOVA, Warden, Metropolitan	)	
Detention Center - Los Angeles,	)	
	)	
Respondent.	)	
	)	
	)	
	)	
	)	
	)	

On October 5, 2007, petitioner Hedelito Trinidad y Garcia filed a petition for writ of habeas corpus. The petition challenged a September 7, 2007 order of United States Magistrate Judge Carla M. Woehrle that certified a request by the Republic of the Philippines for his extradition. Petitioner alleges that his extradition would violate Article 3 of The United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") and federal law, because there are substantial grounds to believe he will be tortured if he is returned to the Philippines. Petitioner also asserts that Judge Woehrle erred in certifying his extradition because the evidence against him was not sufficient to establish probable cause.

On December 20, 2007, petitioner filed a motion to stay the habeas proceeding pending until the

1 Secretary of State reviews his CAT claim filed December 21, 2007.

2
3 **I. FACTUAL BACKGROUND**

4 The following factual summary is taken from Judge Woehrle's order certifying petitioner's
5 extradition to the Philippines.

6 **A. The Alleged Offense**

7 The Philippines seeks petitioner's extradition to face charges of kidnapping for ransom.¹ It
8 alleges that in December 2001, Victor Castaneda y Ramos ("Castaneda") was robbed and kidnapped.²
9 After Castaneda was abducted, the kidnappers purportedly contacted his wife and father and demanded
10 payment of a ransom. The family met the kidnappers' demand and paid ten million pesos to secure
11 Castaneda's release.³ Based on its investigation, the Philippines believes that petitioner was a part of
12 the "Fajardo Gang" that perpetrated the kidnapping.⁴

13 **B. The Extradition Request**

14 On December 17, 2003 the Philippines filed a complaint for petitioner's provisional arrest and
15 extradition. On December 18, 2003, United State Magistrate Judge Patrick J. Walsh issued a warrant
16 for petitioner's arrest.⁵ Petitioner was taken into custody in the Central District of California on October
17 7, 2004.⁶ The next day, he appeared before United States Magistrate Judge Paul Game, Jr.; the Federal
18 Public Defender was appointed to act as his counsel, and petitioner was detained.⁷ On May 19 and 24,
19 2005 Judge Woehrle held an evidentiary hearing at which she took live testimony. After receiving
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21 ¹*In the Matter of the Extradition of Eddie Trinidad*, No. CV 04-10097 MMM(CW) at 14 (C.D.
22 Cal. Sept. 7, 2007) ("Certification of Extraditability" issued by Judge Woehrle).

23 ²*Id.*

24 ³*Id.* at 15-16.

25 ⁴*Id.* at 22.

26 ⁵*Id.* at 1-2.

27 ⁶*Id.* at 1.

28 ⁷*Id.* at 2.

1 additional exhibits, Judge Woehrle heard closing arguments on the extradition request on August 25,
2 2005.⁸ While the matter was pending, petitioner filed a motion for bail on September 21, 2006.⁹ After
3 a hearing on November 13, 2006, Judge Woehrle denied bail.¹⁰ On September 7, 2007 she issued an
4 order certifying petitioner's extradition to the Philippines.

5 **C. Judge Woehrle's Order**

6 A magistrate judge's authority in an extradition proceeding is "limited to determining an
7 individual's eligibility to extradited." *Vo v. Benov*, 447 F.3d 1235, 1245 (9th Cir. 2006). She does this
8 by "ascertaining whether a crime is extraditable under the relevant treaty and whether probable cause
9 exists to sustain the charge." *Id.* If the judge finds that "those requirements are met, the judicial officer
10 must certify the individual as extraditable to the Secretary of State." *Prasoprat v. Benov*, 421 F.3d 1009,
11 1014 (9th Cir. 2005) (emphasis original). Judge Woehrle found in this case that it was undisputed that
12 the crime was extraditable and that "the only remaining and disputed prerequisite [] [was] probable
13 cause."¹¹

14 Petitioner argued that this requirement could not be met because much of the government's
15 evidence was unreliable, in part because it was obtained through torture.¹² Petitioner also asserted that,
16 even if probable cause existed to sustain the charge against him, the court should deny extradition under
17 the CAT on humanitarian grounds because of the risk that he would be subjected to torture in the
18 Philippines.¹³

19 After considering the evidence presented, Judge Woehrle found that probable cause existed
20 warranting certification of petitioner's extradition to the Secretary.¹⁴ She also found that she had "no

21 ⁸*Id.* at 3.

22 ⁹*Id.*

23 ¹⁰*Id.* at 4.

24 ¹¹*Id.* at 10.

25 ¹²*Id.* at 35.

26 ¹³*Id.* at 10 n. 12.

27 ¹⁴*Id.* at 33.

1 authority to decline certification on humanitarian grounds or because of possible torture or mistreatment
 2 awaiting Trinidad in the Philippines.”¹⁵ Judge Woehrle concluded that “such diplomatically sensitive
 3 considerations are within the scope of the Secretary of State’s discretion to extradite, *Prasporat v.*
 4 *Benov*, 421 F.3d 1009, 1016 (9th Cir. 2005), and become ripe for judicial review only if the Secretary
 5 of State determines that Trinidad should be surrendered.”¹⁶

6 **D. Petitioner’s Habeas Petition**

7 Petitioner contends that Judge incorrectly concluded that there was sufficient competent evidence
 8 to support a finding of probable cause.¹⁷ He asserts (1) that Judge Woehrle erred in admitting the
 9 Philippine government’s supplemental evidence; (2) that the properly admitted evidence was not
 10 sufficient to establish probable cause; and (3) that, even if the supplemental evidence were properly
 11 admitted, the finding of probable cause was not supported.¹⁸ Petitioner also contends that his extradition
 12 violates the CAT because there are substantial grounds to believe he will be tortured if he is returned
 13 to the Philippines.¹⁹ Petitioner acknowledges that the Ninth Circuit has held “that a CAT claim cannot
 14 be raised in an initial habeas [proceeding] challenging the extradition decision.”²⁰ He asserts, however,
 15 that “in the absence of definitive Supreme Court authority,” he should be permitted to assert a CAT
 16 claim at this time.²¹ Alternatively, petitioner requests that the court stay the habeas proceedings “if and
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18 ¹⁵*Id.* at 10 n. 12.

19 ¹⁶*Id.*

20 ¹⁷Petitioner’s Memorandum of Points and Authorities in Support of Petition for Writ of Habeas
 21 Corpus (“Pet.’s Habeas Mem.”) at 22.

22 ¹⁸See *id.* at 22-50.

23 ¹⁹*Id.* at 51.

24 ²⁰*Id.* at 52.

25 ²¹*Id.* In seeking a stay, petitioner has apparently abandoned his request that the court address the
 26 merits of his CAT claim before the Secretary has had the opportunity to review it. (See Petitioner’s
 27 Memorandum of Points and Authorities in Support of Motion to Stay (“Pet.’s Mem.”) at 3 (“Under
 28 Ninth Circuit precedent, a district court cannot review a CAT claim until the Secretary issues a surrender
 warrant”).)

until [] the Secretary of State decides to surrender him in violation of international law.”²²

E. Petitioner’s Motion to Stay

Petitioner argues that the court should temporarily stay the habeas proceedings to allow the Secretary time to address the CAT claim. He contends that “[r]ather than subjecting the Court and Respondent to multiple rounds of habeas proceedings, a stay will allow the entire case to be adjudicated in a single action, reducing the time and effort of all involved.”²³ Respondent counters that a stay is inappropriate because the Secretary’s issuance of a surrender warrant cannot be judicially reviewed, and because the court has no authority to require that the Secretary make her decision before it rules on the habeas petition.²⁴

II. DISCUSSION

A. Legal Standard Governing Motions to Stay

“A district court has inherent power to control the disposition of the causes on its docket in a manner which will promote economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North Am. Co.*, 299 U.S. 248, 254-55 (1936); see also *Air Line Pilots Ass’n v. Miller*, 523 U.S. 866, 878 n. 6 (1998) (quoting *Landis*); *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (same). For this reason, the court has discretion to stay proceedings pending before it. See *Gold v. Johns-Manville Sales Corp.*, 723 F.2d 1068, 1077 (3d Cir. 1983) (stating that the authority to stay proceedings derives from the power that every court has to manage the cases on its docket and ensure a fair and efficient adjudication of the matters at hand); *Mediterranean Enters. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983). In exercising its discretion, the court “must weigh competing interests and maintain an even balance.” *Landis*, 299 U.S. at 254-55.

Courts consider a variety of factors in assessing whether a stay is appropriate: (1) the benefits

²²*Id.* This request was included in the habeas petition. Petitioner subsequently filed a separate motion to stay.

²³Pet.’s Mem. at 3.

²⁴Respondent’s Memorandum of Points and Authorities in Opposition to Petitioner’s Motion to Stay (“Resp.’s Opp.”) at 1.

1 to the court of a stay; (2) the prejudice to the plaintiff if a stay is granted; and (3) the prejudice to the
 2 defendant if a stay is not granted. See *Schwartz v. Upper Deck Co.*, 967 F.Supp. 405, 415 (S.D. Cal.
 3 1997) (citing *Gray v. First Winthrop Corp.*, 133 F.R.D. 39, 40 (N.D. Cal. 1990)); see also *CMAX, Inc.*,
 4 300 F.2d at 268 (“Where it is proposed that a pending proceeding be stayed, the competing interests
 5 which will be affected by the granting or refusal to grant a stay must be weighed. Among these
 6 competing interests are the possible damage which may result from the granting of a stay, the hardship
 7 or inequity which a party may suffer in being required to go forward, and the orderly course of justice
 8 measured in terms of the simplifying or complicating of issues, proof, and questions of law which could
 9 be expected to result from a stay” (citation omitted)).

10 Under certain circumstances, stays are appropriate “pending resolution of independent
 11 proceedings which bear upon the case.” *Yong v. I.N.S.*, 208 F.3d 1116, 1119-20 (9th Cir. 2000)
 12 (quoting *Leyva v. Certified Grocers of California Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979)). The
 13 proceedings may be “judicial, administrative, or arbitral in character, and [the rule] does not require that
 14 the issues in such proceedings . . . necessarily [be] controlling of the action before the court.” *Id.*

15 While the general rules governing stays apply in habeas proceedings, the Ninth Circuit has
 16 cautioned that such proceedings “implicate special considerations that place unique limits on a district
 17 court’s authority to stay a case in the interests of judicial economy.” *Id.* at 1120 (citing *Ruby v. United*
 18 *States*, 341 F.2d 585, 587 (9th Cir. 1965)). Courts must give petitions for habeas corpus “special,
 19 preferential consideration to insure expeditious hearing and determination.” *Id.* (quoting *Van Buskirk*
 20 *v. Wilkinson*, 216 F.2d 735, 737-38 (9th Cir. 1954)). As a result, the Ninth Circuit has held, “although
 21 a short stay may be appropriate in a habeas case to await a determination in a parallel case in the same
 22 court . . . , or to allow a state to prepare for a retrial of a successful petitioner . . . , we have never
 23 authorized, in the interests of judicial economy, an indefinite, potentially lengthy stay in a habeas case.”
 24 *Id.*²⁵

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 26 ²⁵In *Rhines v. Weber*, 544 U.S. 269 (2005), the Supreme Court addressed whether a district court
 27 may stay a habeas case in which the petitioner has filed a “mixed petition” containing both exhausted
 28 and unexhausted state claims. The Court held that district courts retain their inherent authority to stay
 in habeas proceedings. See *Rhines*, 544 U.S. at 276 (“AEDPA does not deprive district courts of [the]
 authority [to issue stays]”). Nonetheless, it stated, that discretionary power is circumscribed by the Anti-

B. The Statutory and Regulatory Framework Governing Extradition

1. The Role of the Judiciary and the Executive in Extradition

“Extradition is a matter of foreign policy entirely within the discretion of the Executive branch, except to the extent that a statute interposes a judicial function.” *Vo*, 447 F.3d at 1237 (quoting *Lopez-Smith v. Hood*, 121 F.3d 1322, 1326 (9th Cir. 1997)); see *Blaxland v. Commonwealth Director of Public Prosecutions*, 323 F.3d 1198, 1207 (9th Cir. 2003) (“[E]xtradition is a diplomatic process carried out through the powers of the executive, not the judicial, branch”). Extradition is initiated by a request from the nation seeking extradition to the State Department. *Vo*, 447 F.3d at 1237(citing *Blaxland*, 323 F.3d at 1207). “After the request has been evaluated by the State Department to determine whether it is within the scope of the relevant extradition treaty, a United States Attorney . . . files a complaint in federal district court seeking an arrest warrant for the person sought to be extradited.” *Id.* (quoting *Blaxland*, 323 F.3d at 1208). As long as an extradition treaty exists between the United States and the country seeking extradition, and the crime at issue is covered by the treaty, a judicial officer (typically a magistrate judge) issues a warrant for the person’s extradition. *Id.* (citing 18 U.S.C. § 3184). “After the warrant issues, the judicial officer conducts a hearing to determine whether there is ‘evidence sufficient to sustain the charge under the provisions of the proper treaty or convention,’ or, in other words, whether there is probable cause.” *Id.* (quoting 18 U.S.C. § 3184). If the magistrate judge determines that probable cause exists, “[s]he ‘is required to certify the individual as extraditable to the Secretary of State.’” *Id.* (quoting *Blaxland*, 323 F.3d at 1208 (emphasis original)).

Once a judicial officer has certified that an individual can be extradited, it is the Secretary, representing the executive branch, who ultimately decides whether to surrender the fugitive to the

Terrorism and Effective Death Penalty Act (“AEDPA”), which was intended to reduce delay and encourage petitioners to exhaust all claims in state court before filing a federal petition. *Id.* at 276-77. Thus, while the Court held that district courts had discretion to stay habeas cases to allow petitioners to exhaust state remedies, such stays should “be available only in limited circumstances.” *Id.* at 277 (noting that stays should be granted only where petitioner shows good cause for failing to exhaust claims in state court, and where the unexhausted claims are not meritless). Moreover, the Court cautioned, even when these conditions are present, “mixed petition[s] should not be stayed indefinitely.” *Id.* Rather, “district courts should place reasonable time limits on a petitioner’s trip to state court and back.” *Id.* at 278.

1 requesting country. *Id.*; see 18 U.S.C. § 3186. For the most part, the Secretary's decision whether to
 2 extradite is discretionary. See *Cornejo-Barreto v. Seifert*, 218 F.3d 1004, 1010 (9th Cir. 2000)
 3 ("*Cornejo-Barreto I*") ("The Secretary's decision has been treated as discretionary").²⁶ The Secretary
 4 has authority to "review the judicial officer's findings of fact and conclusions of law de novo, and to
 5 reverse the judicial officer's certification of extraditability if she believes that it was made erroneously."
 6 *United States v. Kin-Hong*, 110 F.3d 103, 109 (1st Cir. 1997) (citing 4 Abbell & Ristau, INTERNATIONAL
 7 JUDICIAL ASSISTANCE: CRIMINAL-EXTRADITION § 13-3-8(2), at 266-69 (1995), and Note, Executive
 8 Discretion in Extradition, 62 COLUM.L.REV. 1313, 1316-25 (1962)). The Secretary may also decline
 9 to surrender the requested individual on various discretionary grounds, including for humanitarian or
 10 foreign policy reasons. See *id.* at 109 (internal citations omitted). Finally, the Secretary has power to
 11 attach conditions to an order of extradition. See *Cornejo-Barreto I*, 218 F.3d at 1010 ("The Secretary
 12 may place conditions on the extradition of an individual, or may determine that the individual should
 13 not be turned over at all"); *Kin-Hong*, 110 F.3d at 109 (citing *Emami v. U.S. District Court*, 834 F.2d
 14 1444, 1453 (9th Cir.1987)).

15 2. The CAT

16 On December 10, 1984, the United Nations General Assembly adopted the CAT "in an effort
 17 to 'make effective the struggle against torture and other cruel, inhuman or degrading treatment or
 18 punishment throughout the world.'" *Cornejo-Barreto I*, 218 F.3d at 1010 (citing the Preamble to the
 19 CAT). The United States became a party to the convention in November 1994. *Id.* at 1011. Article 3

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 21 ²⁶The procedural history of *Cornejo-Barreto* is somewhat unusual. In a subsequent appeal, the
 22 Ninth Circuit held that the earlier decision as to whether the Secretary's decision on CAT claims could
 23 be reviewed was dicta, and therefore not binding on the court. See *Cornejo-Barreto v. Seifert*, 379 F.3d
 24 1075, 1083 (9th Cir. 2004) ("*Cornejo-Barreto II*"). The decision in *Cornejo-Barreto II* was
 25 subsequently taken en banc in *Cornejo-Barreto v. Seifert*, 386 F.3d 938 (9th Cir. 2004). After the
 26 government released Cornejo-Barreto and moved to dismiss the appeal as moot, the Ninth Circuit
 27 vacated its decision in *Cornejo-Barreto II*, but declined to vacate earlier published opinions in the case.
 28 See *Cornejo-Barreto*, 389 F.3d 1307 (9th Cir. 2004) ("*Cornejo-Barreto III*"). As a result, the opinion
 in *Cornejo-Barreto I* remains binding authority. See *Prasporat*, 421 F.3d at 1012 n. 1 (citing *Cornejo-
 Barreto I* as authority, and noting that the Ninth Circuit had vacated *Cornejo-Barreto II*, but declined
 to vacate *Cornejo-Barreto I*); but see *Hoxha v. Levi*, 465 F.3d 554, 565 n. 16 (9th Cir. 2006) (suggesting
 that as a result of *Cornejo-Barreto III*, "neither *Cornejo-Barreto I* nor *Cornejo-Barreto II* is binding
 precedent in the Ninth Circuit").

1 of the CAT states:

- 2 “1. No State Party shall expel, return (‘refouler’)²⁷ or extradite a person to another
3 State where there are substantial grounds for believing that he would be in
4 danger of being subjected to torture.
- 5 2. For the purpose of determining whether there are such grounds, the competent
6 authorities shall take into account all relevant considerations including, where
7 applicable, the existence in the State concerned of a consistent pattern of gross,
8 flagrant or mass violations of human rights.” *Id.* (quoting CAT, Article 3).

9 In 1998, Congress passed the Foreign Affairs Reform and Restructuring Act, Pub. L. No. 105-
10 277, § 2242 (“FARR Act”). The FARR Act implemented Article 3 of the CAT, stating that “it is ‘the
11 policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any
12 person to a country in which there are substantial grounds for believing the person would be in danger
13 of being subjected to torture.’” *Cornejo-Barreto I*, 218 F.3d at 1011 (citing FARR Act § 2242(a)). The
14 FARR Act requires that the CAT be implemented “by ‘the appropriate agencies,’ in this case the
15 Department of State, whose heads are directed to ‘prescribe regulations to implement the obligations
16 of the United States under Article 3’ of the Torture Convention.” *Id.* (quoting FARR Act, § 2242(b)).

17
18 After the FARR Act was enacted, the Department of State adopted implementing regulations
19 governing extraditions. *Id.* “These regulations set out a procedure for the Secretary of State to identify
20 individuals who qualify for relief under the Torture Convention.” *Id.* They require that the Secretary
21 determine whether it “is more likely than not” that a person facing extradition will be tortured in the
22 state requesting extradition. See 22 C.F.R. § 95.2(b) (“In order to implement the obligation assumed
23 by the United States pursuant to Article 3 of the Convention, the Department considers the question of
24 whether a person facing extradition from the U.S. ‘is more likely than not’ to be tortured in the State
25 requesting extradition when appropriate in making this determination”). The regulations note that

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27 ²⁷“Refouler” is a French word, which means “to force back,” “to turn away,” or “to turn back.”
28 See Reverso Online French-English Dictionary (<http://dictionary.reverso.net/french-english/refouler>)
(last visited February 26, 2008).

1 “[d]ecisions on extradition are presented to the Secretary only after a fugitive has been found
2 extraditable by a United States judicial officer.” *Id.*, § 95.3 (a). They provide that whenever allegations
3 concerning torture are made or brought to the Secretary’s attention, “appropriate policy and legal offices
4 review and analyze information relevant to the case in preparing a recommendation to the Secretary as
5 to whether or not to sign the surrender warrant.” *Id.* After analyzing the relevant information, “the
6 Secretary may decide to surrender the fugitive to the requesting State, to deny surrender of the fugitive,
7 or to surrender the fugitive subject to conditions.” *Id.*, § 95.3(b).

8 The State Department has not promulgated regulations governing the Secretary’s review of
9 extradition requests where no CAT violation is alleged or suspected. See *Cornejo-Barreto I*, 218 F.3d
10 at 1010 (“Recent regulations promulgated after Congress passed legislation to implement the Torture
11 Convention . . . appear to be the only regulations governing the Secretary’s extradition decisions”).
12 Nonetheless, the Secretary’s discretionary practice in other cases tracks the regulations governing cases
13 implicating the CAT. The principal difference is that, in cases where a CAT claim is made, “the statute
14 imposes a mandatory duty on the Secretary to implement the FARR Act.” *Cornejo-Barreto I*, 218 F.3d
15 at 1014. It is because of this mandatory duty (and the fact that the statute does not preclude review) that
16 the *Cornejo-Barreto I* court held that “a fugitive fearing torture may petition for review of the
17 Secretary’s decision to surrender him.” *Id.*²⁸

18
19 ²⁸Respondent argues that this holding is dicta and is erroneous. Because the court declines to
20 stay this action on other grounds, it need not reach the merits of this argument. The court notes,
21 however, that to the extent *Cornejo-Barreto I* is binding authority, it has no power to conclude that it
22 was wrongly decided. See *Hart v. Massanari*, 266 F.3d 1155, 1170 (9th Cir. 2001) (“A district judge
23 may not respectfully (or disrespectfully) disagree with his learned colleagues on his own court of
24 appeals who have ruled on a controlling legal issue, or with Supreme Court Justices writing for a
25 majority of the Court. Binding authority within this regime cannot be considered and cast aside; it is
26 not merely evidence of what the law is. Rather, caselaw on point *is* the law. If a court must decide an
27 issue governed by a prior opinion that constitutes binding authority, the later court is bound to reach the
28 same result, even if it considers the rule unwise or incorrect. Binding authority must be followed unless
and until overruled by a body competent to do so” (emphasis added)).

Respondent asserts that *Cornejo-Barreto I*’s statement that the Secretary’s decision in a CAT
case can be judicially reviewed is non-binding dicta, because the panel held that petitioner’s CAT claim
was not yet ripe, in that the Secretary had not yet ordered that he be surrendered. (Resp.’s Opp. at 21.)
Respondent cites now Chief Judge Kozinski’s concurrence, in which he declined to join Part 3 of the
opinion because “the question of whether petitioner would be entitled to judicial review of an extradition
decision by the Secretary of State is not before us.” *Cornejo-Barreto I*, 218 F.3d at 1017 (Kozinski, J.,

3. The State Department's Procedures for Processing Extraditions

The State Department has issued a Foreign Affairs Manual ("FAM") which governs internal administration of the agency. See *Dos Santos v. United States*, 19 Cl. Ct. 681, 682 (Cl. Ct. 1990) ("The administrative regulations of State, as set forth in the Foreign Affairs Manual . . . , control personnel administration for foreign service employees"); *Nwansi v. Rice*, No. C 06-0003 TEH, 2006 WL 2032578, *4 n. 3 (N.D. Cal. July 18, 2006) ("The Foreign Affairs Manual (FAM) guides the State Department in performing its duties. It is a compilation of the Immigration and Nationality Act, 8 U.S.C. § 1181, et seq., and of Departmental regulations, interpretations and procedural notes"). The FAM describes judicial review of a finding of extraditability, see 7 FAM § 1634.3 ("Judicial Review of a Finding of Extraditability"), and states that after a judge finds that an individual is extraditable, he may file a petition for writ of habeas corpus, *id.*, § 1634.3(a). The manual provides that, "if a fugitive seeks judicial review of the extradition judge's finding of extraditability, the Department suspends its final review of the case." *Id.*, § 1634.3(f). The department "typically begins or resumes its review process" only after the district court denies the petition for habeas corpus – unless the court stays surrender pending appeal. *Id.*

Clifton M. Johnson, the Assistant Legal Adviser for Law Enforcement and Intelligence ("L/LEI") in the Office of the Legal Adviser of the Department of State,²⁹ represents that in this case, the department intends to wait until the conclusion of the pending habeas proceedings to undertake "the extensive and sensitive process [of reviewing petitioner's CAT claim] if there [is] still a question as to

concurring). Without deciding the issue, the court notes that the CAT claim was the sole issue before the panel on appeal. *Id.* at 1009. The panel clearly found it necessary to address whether it had jurisdiction to adjudicate the claim; as a result, Judge Fletcher's majority opinion examines the FARR Act and the APA, and concludes that "an extraditee ordered extradited by the Secretary of State who fears torture upon surrender . . . may state a claim cognizable under the APA that the Secretary of State has breached her duty, imposed by the FARR Act, to implement Article 3 of the Torture Convention." *Id.* at 1016-17. While the *Cornejo-Barreto II* court held that this language in *Cornejo-Barreto I* was dicta (see *Cornejo-Barreto II*, 379 F.3d at 1083 ("[W]e conclude that *Cornejo-Barreto I* is advisory and thus not the law of the circuit")), that opinion was vacated by *Cornejo-Barreto III*.

²⁹Declaration of Clifton M. Johnson ("Johnson Decl."), ¶ 1.

1 whether [petitioner] will be found to be extraditable.”³⁰

2 Johnson also details the department’s procedure for reviewing CAT claims:

3 “Whenever allegations relating to torture are brought to the Department’s attention by
4 the fugitive or other interested parties, appropriate policy and legal offices within the
5 Department with regional or substantive expertise review and analyze information
6 relevant to the particular case in preparing a recommendation to the Secretary.”³¹

7 The department seeks input from the Bureau of Democracy, Human Rights, and Labor (which
8 authors the government’s annual Human Rights Reports), relevant regional bureaus, the country desk
9 for the country seeking extradition, and the U.S. Embassy in that country.³² The Secretary considers all
10 of the information gathered internally, as well as materials submitted by the individual or persons acting
11 on his behalf.³³ In some instances, rather than declining to surrender the individual, the Secretary will
12 condition extradition on assurances by the requesting state that the individual will not be tortured or will
13 be protected from mistreatment; this often requires a diplomatic dialogue with the requesting state.³⁴
14 On occasion, the department has monitored – or arranged to have a third party monitor – the condition
15 of an individual who has been extradited.³⁵ The Secretary determines how to handle extradition requests
16 on a case-by- case basis, taking into account the particularized circumstances of the situation.³⁶ The
17 department argues that it should not be required to undertake this individualized review until the court
18 rules on the pending habeas petition.

19 **C. Whether the Court Should Grant Petitioner’s Request for a Stay**

20 Petitioner seeks a stay of the pending habeas proceedings in order to allow the Secretary to rule

21 ³⁰*Id.*, ¶ 11.

22 ³¹*Id.*, ¶ 6.

23 ³²*Id.*

24 ³³*Id.*, ¶ 7.

25 ³⁴*Id.*, ¶ 8.

26 ³⁵*Id.*, ¶ 9.

27 ³⁶*See id.*

on his outstanding CAT claim. He argues that by granting a stay, the court can avoid having to adjudicate the successive habeas petition that will be filed if the Secretary decides to surrender him to the Philippines. Petitioner does not explain, however, how the actions could be consolidated. It is possible that petitioner suggests his CAT claim be severed and decided separately from the Secretary's broader review of the extradition. Petitioner cites no authority that would permit the Secretary to proceed in this fashion. Alternatively, petitioner may suggest that the Secretary should determine whether or not to extradite him before the court rules on the pending habeas petition. The court, however, has no authority to dictate to the Secretary how and when he should perform its duties under the FARR Act and the CAT.

1. Whether the CAT Claim Can Be Severed

Petitioner does not explicitly argue that the Secretary should consider his CAT claim separately from her review of the extradition as a whole. His evidence and argument, however, suggest that he has such a process in mind.³⁷ Petitioner asserts that he "has already filed all the relevant paperwork regarding his CAT claim directly [with] the designated representative [in] the State Department,"³⁸ and that a stay of the habeas proceeding need remain in place only until the Secretary "review[s] the merits his CAT claim."³⁹ Petitioner proffers a letter he sent to the State Department, which requests that the

³⁷Petitioner argues, for example, that "[t]he situation is analogous to a state prisoner obtaining a stay in federal court to exhaust his state claims in state court." (Petitioner's Reply Brief to Stay Motion ("Pet.'s Reply") at 6.) This indicates that he wishes to have the court hold the habeas proceeding in abeyance while the Secretary addresses the merits of his CAT claim.

³⁸Pet.'s Mem. at 8. This includes documentary evidence specific to his case and the relevant human rights reports. (*Id.*)

³⁹*Id.* Petitioner states that the Secretary should require only sixty days to review his submission and render a decision. (*Id.* at 8.) He derives this time frame from 18 U.S.C. § 3188, which requires that an individual who has been certified for extradition to a foreign government must be delivered within "two calendar months after such commitment" or may be released from custody by judicial order. 18 U.S.C. § 3188. This "two-month period is tolled during the proceedings challenging the extradition," however. *Lindstrom v. Graber*, 203 F.3d 470, 473 (7th Cir. 2000); see *In re United States*, 713 F.2d 105, 110 (5th Cir. 1983) ("Delays attributable to the pendency of this [habeas] action would be supported by sufficient cause" to toll the two month period); *Eain v. Wilkes*, 641 F.2d 504, 524 n. 26 (7th Cir. 1981) (noting that the two-month period runs from the "final judicial action" in a case); *Barrett v. United States*, 590 F.2d 624, 626 (6th Cir. 1978) ("[D]elay exclusively due to hearing and processing [of petitioner's habeas petition] cannot be counted under the statute's time limitation"). If the court

1 Secretary “deny extradition based upon the likelihood that he will be tortured upon his return.”⁴⁰
 2 Tellingly, the letter does not request that the Secretary review Judge Woehrle’s finding of probable
 3 cause.⁴¹

4 Assistant Legal Advisor Johnson disputes the suggestion that petitioner’s case could be reviewed
 5 in this piecemeal fashion. He notes that “[i]n determining whether a fugitive should be extradited, the
 6 Secretary may consider *de novo*, any and all issues properly raised before the extradition court (or a
 7 habeas court), as well as any other considerations for or against surrender.”⁴² Among these are
 8 humanitarian issues, including whether the extradition was politically motivated; whether the individual
 9 is likely to be persecuted or denied a fair trial or humane treatment upon his or her return; and whether
 10 it is more likely than not that the individual will face torture in the requesting state.⁴³ Johnson’s
 11 declaration makes it clear that the Secretary reviews CAT allegations as part of an overall evaluation
 12 as to whether an individual should be surrendered.

13 This understanding of the procedure employed is consistent with Ninth Circuit law. In *Cornejo-*
 14 *Barreto I*, the court held that “[a]n APA challenge to the Secretary’s extradition decision is [] ripe for
 15 review only after the secretary has decided to surrender a fugitive who alleges he is likely to face
 16 torture.” *Cornejo-Barreto I*, 218 F.3d at 1016; see *Prasoprat*, 421 F.3d at 1016 n. 5 (“[T]he rule of

17 _____
 18 were to stay this action, the habeas petition would remain pending, and the two-month time limit would
 19 not constrain the Secretary. Petitioner acknowledges that absent a specific time limit, “it is impossible
 20 to know exactly how long the Secretary [would] require.” The true length of any stay, therefore, is
 21 uncertain.

22 ⁴⁰*Id.*, Exh. 172.

23 ⁴¹While it is theoretically possible that petitioner has chosen to pursue only his CAT claim with
 24 the Secretary, the court finds this highly unlikely. Instead, it is more likely that petitioner understands
 25 that the Secretary cannot address the extradition as a whole until this court renders a ruling on his habeas
 26 petition.

27 ⁴²Johnson Decl., ¶ 4.

28 ⁴³*Id.* While consideration of humanitarian considerations is discretionary, if the Secretary finds
 that it is more likely than not that an individual will be tortured once delivered to the requesting state,
 she is bound by the CAT not to deliver the individual. *Id.*, ¶ 5; see *Cornejo-Barreto I*, 218 F.3d at 1014
 (noting that both Article 3 of the CAT and the FARR Act impose on the Secretary a mandatory duty not
 to extradite a person likely to face torture).

1 non-inquiry does not prevent an extraditee who fears torture upon surrender to the requesting
2 government from petitioning for habeas corpus review of the Secretary of State's decision to extradite
3 him," citing *Cornejo-Barreto I*, 218 F.3d at 1009 n. 5, 1016-17). Even under the most generous reading
4 of *Cornejo-Barreto I*, judicial review of a CAT claim is available only after the Secretary has
5 surrendered the individual. Both *Cornejo-Barreto I* and *Prasoprat* contemplate that the Secretary's
6 denial of a CAT claim will be simultaneous with her decision to surrender the individual to the
7 requesting state. Neither these cases nor any other authority of which the court is aware suggests that
8 the Secretary can or will review the merits of a CAT claim before making a final decision regarding
9 extradition.

10 The complexities inherent in reviewing a CAT claim justify proceeding in this manner. As
11 noted, the Secretary considers input from many sources before deciding such a claim. Information that
12 bears on whether or not an individual may face torture if returned to the requesting state may also be
13 relevant in assessing humanitarian concerns that inform whether the Secretary should exercise her
14 discretion to deny the extradition request. A thorough review of the requesting state's criminal justice
15 system might, for example, reveal that an extradition request is politically motivated or that an
16 individual would be "likely to be persecuted or denied a fair trial or humane treatment upon his or her
17 return."⁴⁴ These are "humanitarian considerations" that are not directly related to the question of
18 whether an individual will be tortured. The Secretary has always considered such factors in making her
19 discretionary final decision. Although these factors do not bear on torture, the investigation that would
20 uncover them is likely to be identical to the investigation that would uncover evidence of torture. To
21 separate the review of a CAT claim from the remaining discretionary considerations would therefore
22 duplicate work unnecessarily.⁴⁵

23 To the extent, therefore, that petitioner suggests the Secretary should decide his CAT claim
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25 ⁴⁴Johnson Decl., ¶ 4.

26 ⁴⁵Moreover, as Johnson notes, the Secretary sometimes initiates a diplomatic dialogue or
27 examines other sensitive issues in evaluating a CAT claim. To force the Secretary to address potentially
28 delicate foreign policy issues before knowing whether or not an individual can properly be extradited
risks creating unnecessary diplomatic issues.

1 before reviews the extradition request as a whole, his argument is unavailing.

2 **2. Whether the Court Can Order the Secretary to Decide Whether to**
3 **Surrender Petitioner Before it Rules on the Pending Habeas Petition**

4 Having determined that the CAT claim must be decided as part of the Secretary's overall review
5 of the extradition request, the court must address whether it can order the Secretary to act on petitioner's
6 extradition before the court decides his habeas petition. For the stay petitioner seeks to have any effect,
7 the Secretary must decide whether or not to surrender him to the Philippines before judgment is entered
8 on the habeas petition. To ensure this order of processing, the court must have the power to order the
9 Secretary to act within a particular time frame. If such power does not exist, then the Secretary need
10 never act (because the sixty day statutory period will never begin running), and the stay will be not just
11 indefinite, but infinite. Petitioner cites no authority for the proposition that the court has power to enter
12 such an order; he relies exclusively on the court's inherent authority to stay proceedings in aid of
13 judicial economy.

14 As noted, the Foreign Affairs Manual states that the Secretary's normal practice is to wait until
15 habeas proceedings have concluded before undertaking a review of an extradition request. See *Cheung*
16 *v. United States*, 213 F.3d 82, 88 (2d Cir. 2000) ("If habeas relief is denied, the Secretary of State has
17 sole discretion to weigh the political and other consequences of extradition and to determine finally
18 whether to extradite the fugitive" (emphasis added)). Also as noted, "[e]xtradition is a matter of foreign
19 policy entirely within the discretion of the executive branch, except to the extent that the statute
20 interposes a judicial function." *Vo*, 447 F.3d at 1237 (quoting *Lopez-Smith*, 121 F.3d at 1326). The
21 extradition statutes contemplate that the magistrate judge will make the initial certification that an
22 individual is extraditable. Thereafter, the individual can seek review of that decision by filing a petition
23 for writ of habeas corpus. *Cornejo-Barreto I* appears to authorize a second round of habeas review after
24 the Secretary's decision of a CAT claim. The statutes and case law do not specify whether or not the
25 Secretary must delay review of an extradition request until a habeas petition challenging a certification
26 of extraditability is decided. Because she has broad discretion in extradition matters, the absence of
27 such a limitation compels the conclusion that the Secretary is free to wait for the district court or to
28 proceed on a parallel track.

1 The Foreign Affairs Manual confirms that the Secretary's "typical" practice is to wait for the
2 habeas petition to be decided. See 7 FAM § 1634.3 (f). Reflecting this practice, the two-month time
3 limit on delivering an individual to the requesting state is tolled pending the completion of habeas
4 review. See *Lindstrom*, 203 F.3d at 473. There would, of course, be no reason to toll the statutory time
5 limit unless there was an expectation that the Secretary would make a final decision regarding
6 extradition only after habeas proceedings had concluded. Similarly, the Secretary has authority to
7 "review the judicial officer's findings of fact and conclusions of law *de novo*, and to reverse the judicial
8 officer's certification of extraditability if she believes it was made erroneously." *Kin-Hong*, 110 F.3d
9 at 109. By waiting until habeas review is complete, the Secretary can ensure that a *de novo* review of
10 certification is required.⁴⁶ To the extent that new information or arguments come to light during the
11 habeas proceedings, the Secretary will have the benefit of reviewing them as well.⁴⁷

12 In short, it is clear that the Secretary has compelling reasons to wait until habeas review is
13 complete before embarking on her own discretionary review of an extradition request. It is equally clear
14 that courts should be careful not to intrude on the Secretary's discretion in this area. See *Blaxland*, 323
15 F.3d at 1208 ("Unwarranted expansion of judicial oversight may interfere with foreign policy and
16 threaten the ethos of the extradition system").

17 Courts have discretion to stay proceedings in the interest of managing their dockets (though, as
18 noted, this discretion is somewhat circumscribed in the habeas context). Nonetheless, that discretion
19 does not authorize unwarranted interference in the internal workings of the State Department. This is

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21 ⁴⁶Respondent argues that this is another reason militating against a stay. It argues that "it is
22 better for foreign policy if extradition is denied based on a judicial ruling rather than the Secretary's
23 refusal to issue a surrender warrant." (Resp.'s Opp. at 11.) This argument was noted with approval in
24 a recent Fourth Circuit decision. See *Mironescu v. Costner*, 480 F.3d 664, 673 (4th Cir. 2007)
25 ("Moreover, one could well argue that the damage done to our foreign relations with another country
26 is likely to be less when a court, as opposed to the Secretary, makes the decision that extradition must
27 be denied"); see also *Quinn v. Robinson*, 783 F.2d 776, 789 (9th Cir. 1986) ("Far from embarrassing the
28 executive branch, assigning to the judiciary the responsibility for determining when the exception
applies actually affords a degree of protection to the executive branch. As a political branch, the
executive could face undue pressure when public and international opposition to the activities of an
unpopular group create conflicts with the treaty obligation created by the political offense exception").

⁴⁷Waiting also eliminates the risk that the Secretary will reach a conclusion that is inconsistent
with the court's habeas decision.

1 especially true in the extradition context, as to which the Ninth Circuit has cautioned that courts must
2 defer to the executive unless explicitly authorized to act. *Vo*, 447 F.3d at 1237

3 3. Conclusion

4 For the reasons stated, the court declines to stay this action.⁴⁸ Petitioner obviously believes that
5 his CAT claim has merit and wishes to have it examined as quickly as possible. The court will act
6 expeditiously on the pending habeas petition, and petitioner can then, if necessary, secure review by the
7 Secretary of the extradition request and his CAT claim.

8 In reaching this result, the court does not address whether habeas review of the Secretary's
9 ultimate decision on the CAT claim is available. That issue will be ripe for decision only if the
10 Secretary decides to surrender petitioner to the Philippines and a second habeas petition is filed.⁴⁹

11
12 ⁴⁸Because petitioner has failed to justify the intrusion on executive authority that a stay would
13 represent, the court need not directly address the discretionary factors that normally govern the granting
14 of a stay. Nonetheless, the court's conclusion is supported by an application of those factors. The
15 second factor the court must consider is prejudice to the non-moving party if a stay is granted. See
16 *Schwartz*, 967 F.Supp. at 415. Here, a stay would greatly interfere with the Secretary's compelling
17 interest in controlling the extradition process. The interference would be so great that it would outweigh
18 the marginal benefits that might accrue to petitioner or the court. While it is true that a stay *might*
19 reduce the amount of time petitioner must spend in pre-extradition confinement, it is also possible that
a stay would trigger a protracted appeals process that would further delay final determination of his
status. And, while it is clear that it would be more convenient for the court to address all possible
habeas issues in a single petition, if the court is required to address a second petition, it will have the
benefit of having conducted a full review of the record in this action. Finally, if petitioner's CAT claim
is as strong as he contends it is, there may well be no need for a second petition.

20 ⁴⁹At oral argument, petitioner expressed concern that absent a stay, he will be denied an
21 opportunity to seek habeas review of his CAT claim. Petitioner noted that the government and the
22 Secretary take the position that there is no right to judicial review of the Secretary's decision on a CAT
23 claim. He also observed that nothing in the statutory or regulatory scheme demands that the Secretary
24 delay petitioner's actual surrender should the Secretary decide that surrender is appropriate. Thus,
25 petitioner fears that once the Secretary makes a decision, he may be surrendered without notice and thus
26 without an opportunity to pursue the second habeas petition he contends is authorized by *Cornejo-*
27 *Barreto I*. As the government noted at argument, however, the court is empowered, at the conclusion
28 of the present habeas proceeding, to stay any surrender of petitioner until he has had the opportunity to
seek habeas review of the Secretary's decision on the CAT claim. Furthermore, there is no indication
that the government will attempt to evade judicial review as petitioner fears. In *Cornejo-Barreto I*, the
court noted that "[t]he government delayed extradition in light of the opinion in *Cornejo-Barreto I* to
give *Cornejo-Barreto* an opportunity to seek judicial review of the Secretary's decision." *Cornejo-*
Barreto II, 379 F.3d at 1081. *Cornejo-Barreto I* has not been abrogated, and even if the government
disagrees with the Ninth Circuit's analysis, there is no reason to expect that it will seek to avoid the

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III. CONCLUSION

For the foregoing reasons, the court denies petitioner's motion to stay.

DATED: March 3, 2008


MARGARET M. MORROW
UNITED STATES DISTRICT JUDGE

effect of the decision by extraditing petitioner before he can file a habeas petition.

For these reasons, the court finds that the stay sought is not the only or best way to protect petitioner's ability to bring a successive habeas petition should the Secretary deny his CAT claim. The government indicated at oral argument that it presumed the court would stay petitioner's extradition at the conclusion of the pending habeas proceeding. The simplest way to ensure that this will occur would be for the parties to enter into a stipulation requesting that the court enter such an order if habeas relief is denied. If the parties cannot agree on a stipulation, petitioner may file an appropriate request.